THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 13688 of 2006

Dated: 23-08-2006

Between:

Syed Samiuddin Hashmi

..... PETITIONER

AND

Regional Passport Officer and another

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 13688 of 2006

O R D E R:

The petitioner claims to be a permanent resident of Hyderabad. It is stated that he was married to one Mohamooda Fatima on 23-08-1998, however in view of certain serious disputes arose between them, he pronounced divorce on
15-11-2000 as per Muslim Personal Law.

It appears that thereafter the wife of the petitioner made a complaint under the provisions of the Dowry Prohibition Act, 1961 and on the basis of the same Crime No.25/2001 was registered against the petitioner under Sections 498-A and 404 IPC and Sections 4 and 6 of the Act. That apart, the petitioner's wife filed W.P.No.4212 of 2004 questioning the action of the Police in not investigating into the complaint made by her. The said writ petition was disposed of by this Court by order dated 15-07-2004. The operative portion of the said order may be extracted here under:

> "In view of the fact that a case is registered against the third respondent, the official respondents are directed to take appropriate steps either for impounding or cancellation of the passport of the third respondent, who is stated to be residing in Kongdon of Saudi Arabia and see that he should be deported from that Country and produce before the criminal Court, where the matter is pending. The said action is directed to be initiated and completed expeditiously, preferably within a period of three months."

Aggrieved by the same, the petitioner preferred an appeal being W.A.No.1920 of 2004, which was allowed by a Division Bench of this Court by Judgment dated 09-12-2004. The relevant portion of which may be extracted hereunder:

> "The direction, which has been issued in the instant case, on the face of it, binds down the passport authority to pass an order either impounding or canceling the passport. There is no scope left in the direction issued for exercise of discretion by the passport authority. Passport authority cannot, in a mechanical manner, pass an order. There is a discretion left to be exercised by him and powers can be exercised only on the conditions laid down under the provisions of the Act, which could not have been controlled of by the nature of directions issued in the instant case. Accordingly, we allow the appeal, modify the impugned order and direct that the Regional Passport Officer, Secunderabad, will treat the writ petition itself as request made by Mahmooda Fatima for cancellation or impounding of the passport of the appellant herein and will deal with the said request strictly in accordance with law and pass appropriate orders thereon within a period of four weeks from today. No costs."

While so, on 26-03-2006 the Immigration authorities at the Mumbai Airport had seized the petitioner's passport vide acknowledgment dated 26-03-2006, without assigning any reasons therefor. The petitioner was orally asked to contact the Passport Authority at Hyderabad. The petitioner also came to know that the Mumbai Immigration Authority had sent the seized passport to the passport Authority, Hyderabad. When the petitioner approached the 1st respondent and requested for return of his passport, he declined even to receive the application of the petitioner. Aggrieved by the said action, this writ petition is filed.

On behalf of the respondents, the Regional Passport Officer,

Hyderabad filed a counter affidavit stating that in terms of the order in W.P.No.4212 of 2004 dated 05-07-2004 the passport of the petitioner was impounded on 02-08-2005 under Section 10 (3) (e) of the Passports Act, 1967, however, the letter addressed to the petitioner informing about the impounding of his passport was returned unserved with a postal endorsement 'No such house number in Risala Bazar'.

I have heard learned counsel for both the parties and perused the material on record.

The judgment of the Division Bench in W.A.No.1920 of 2004 shows that while allowing the writ appeal, the Division Bench made it clear that the power to impound the passport under Section 10 of the Passports Act, 1967 (for short 'the Act') involves discretion to be exercised by the Passport Authority and the passport cannot be impounded in a mechanical manner. The Division Bench while modifying the order in W.P.No.4212 of 2004 directed the Passport Officer to deal with the request of the petitioner's wife strictly in accordance with law and pass appropriate orders. Strangely, the respondent did not refer to the judgment of the Division Bench in W.A.No.1920 of 2004 and even in the counter-affidavit it was pleaded that the passport was impounded in terms of the order in W.P.No.4212 of 2004.

Thus, it is clear that the respondent while impounding the passport of the petitioner did not take into consideration the judgment of the Division Bench in W.A.No.1920 of 2004. It is obvious that the passport was impounded merely on the basis of the order in W.P.No.4212 of 2004 without exercising the discretion under Section 10 of the Act.

The petitioner also pleaded that even the order of impounding was never communicated to him.

Viewed from any angle, the impugned order cannot be sustained.

Accordingly, the impugned order is set aside and the Writ

Petition is disposed of leaving it open to the respondents to pass appropriate orders afresh in terms of the judgment of the Division Bench in W.A.No.1920 of 2004 following due process of law. No costs.

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G. ROHINI, J

Dated: 23-08-2006
KLP